

221522 2215200

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of United Utility Companies, Inc.
for Adjustment of Rates and Charges and
Modifications to Certain Terms and Conditions
for the Provision of Water and Sewer Service

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2009 - 479 - WS

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

SC Bar Number: 68269

Telephone: 803-252-3300

Address: Post Office Box 8416

Fax: 803-771-2410

Columbia, SC 29202

Other:

Email: bmustian@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input checked="" type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	



WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
ELIZABETH ZECK*
BENJAMIN P. MUSTIAN
MICHAEL R. BURCHSTEAD
ANDREW J. MACLEOD

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
ALAN WILSON
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

January 22, 2010

VIA HAND DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Application of United Utility Companies, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service. Docket No.: 2009-479-WS

Dear Mr. Terreni:

I am writing to you regarding certain letters recently submitted to United Utility Companies, Inc. ("UUC" or the "Company"), the Commission and/or ORS by customers or other entities concerning the above-referenced docket. These letters (copies enclosed) generally indicate a desire for individuals or entities to participate in this proceeding; however, the exact nature of their intended participation is unclear from the letters. Therefore, and for the reasons discussed below, UUC respectfully requests that the Commission clarify its interpretation of such letters so that the rights and responsibilities of the parties relative to this matter are defined.

As you can see from the enclosed letters, they are susceptible to differing interpretations as to the relief sought. For example, the Lake Trollingwood Homeowners' Association ("HOA") recently submitted two letters to the Commission, both dated January 7, 2010. The first letter submitted by the HOA indicated that the individual homeowners listed therein "request that a hearing be held in their county of residence, Greenville County." The second HOA letter indicates that certain homeowners identified therein are "petition[ing] to intervene at the hearing scheduled on Tuesday, March 23, 2010, at the Commission's Hearing Room in Columbia," but "would prefer to be parties of record at a hearing in Greenville County." These letters do not indicate that the HOA itself intended to intervene as a legal entity, but rather suggest that the HOA only was indicating which members of its organization desired to participate in

(Continued . . .)

this matter. By its letter dated January 15, 2010, however, the Commission admitted the HOA, and not the individual homeowners, as a party of record in this proceeding unless challenged. Similarly, Mr. Alvin F. Simpson, Jr. submitted the attached December 15, 2009, letter to UUC and ORS in which he states that he is petitioning to intervene in this matter, but indicates his preference to participate in a night hearing in Cherokee County.¹ Because of these incongruous requests, it is unclear to UUC whether these customers are aware of the distinction between their desired participation as a protestant or an intervenor and the rights and responsibilities concomitant thereto.

As the Commission is aware, protestants and intervenors are both permitted to participate in regulatory proceedings subject to varying conditions. For example, Commission Regulation 103-804.R states that a protestant is “[a]n individual objecting on the ground of private or public interest to the approval of an application” and that “[a] protestant may offer sworn testimony without the privilege of cross-examination of witnesses offered by other parties.” A protestant may therefore appear at a hearing and testify on a matter without being obliged to prefile written testimony in accordance with Commission Regulation 103-845.C.

By contrast, an intervenor is required to submit a petition to intervene which sets forth the facts from which the nature of the petitioner’s alleged right or interest can be determined, the grounds of the proposed intervention, and the position of the petitioner in the proceeding.² Commission Reg. 103-825.A(3). Once admitted, an intervenor is permitted to participate as a party of record with the right of cross-examination and is subject to the requirements set forth in the Commission’s Regulations governing practice and procedure. In particular, intervenors must prefile testimony with the Commission (See R. 103-845.C), and, to the extent they are not appearing on their own behalf, but on behalf of other persons or entities, they must be represented by an attorney admitted to practice in South Carolina. See Commission Regs. 103-804.T(1)(b); 103-805.B, C.³

Furthermore, to the extent that these persons and entities have petitioned to intervene in this proceeding and also requested the ability to participate in a public hearing to be held in their county of residence, the Commission has previously limited the ability of a customer to testify at both proceedings so as to prevent cumulative and repetitive testimony in accordance with Commission Regulation 103-845 and 846. As well, the Commission typically requires the applicant to provide a copy of all previous and future filings to intervenors permitted to participate in a proceeding. Because of the

¹ Please note that Mr. Simpson did not file this request with the Commission.

² UUC notes that the petition to intervene filed by the HOA on behalf of certain of its members does not satisfy the requirements of Commission Regulation 103-825.A(3). Specifically, the HOA is not a customer of the Company and, therefore, has not alleged sufficient standing to be admitted as a party of record in this proceeding.

³ As referenced by the Commission in its letter dated January 15, 2010, to the extent that the HOA as a legal entity intends to participate in this proceeding as a party of record, it would be required to engage an attorney admitted to practice in South Carolina to represent its interests. See Commission Regulation 103-805.B. In so far as the individual homeowners identified in the HOA’s letter dated January 7, 2010, are only seeking to represent their own individual interests and not the interests of the HOA or other persons, these customers may elect to represent themselves in this matter. Commission Regulation 103-805.C

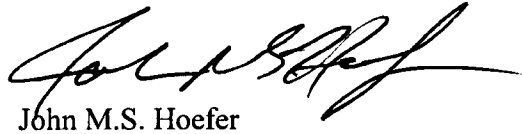
ambiguous nature of the requests, UUC is therefore uncertain as to the requirements of these persons and entities, the restrictions which may be placed on their participation, and the Company's own responsibilities as to whether they should be considered parties of record in accordance with Commission Regulation 103-804.L.

UUC therefore submits that clarification is needed in order to ascertain the intentions of these persons and entities in this matter, limit confusion relative to customer participation in the upcoming public hearings, and ensure administrative due process to all. The Company therefore respectfully requests that the Commission inform the parties of the manner in which these persons will be permitted to participate in this proceeding.

Thank you for your consideration of this request. As always, if you have any questions or if I can be of any assistance, please do not hesitate to contact me.

Sincerely,

WILLOUGHBY & HOEFER, P.A.



John M.S. Hoefer

JMSH/cf
Enclosures

cc: Nanette S. Edwards, Esquire
Duke K. McCall, Jr., Esquire
William H. Jordan, Esquire
Lake Trollingwood, Inc. c/o
Rica Rose Conover
Alvin F. Simpson, Jr.
(all via first class mail with enclosures)

Alvin F. Simpson Jr.
411 Killion Drive
Gaffney, SC 29340

December 15, 2009

Reference: Docket # 2009-479-W/S

Office of Regulatory Staff
Post Office Box 11263
Columbia, SC 29211

Attn: Docketing Department
To Whom It May Concern:

Please accept this letter as my Petition to Intervene in accordance with the Rules of Practice and Procedure of the Public Service Commission of South Carolina. I would like to make a request that a hearing be held in Gaffney South Carolina in Cherokee County. Also, accept this as my request to appear before the commission at this hearing or the Columbia, SC hearing on March 23, 2010 if one cannot be held here in the county where I reside. I will need approximately 20 minutes to cover all the information that I will present on behalf of myself and fellow residents of the Briarcreek subdivision. United Utility Company Inc. operates two facilities that treat the wastewater for our subdivision.

Should you need to contact me, my email address is alvinsimpson@yahoo.com or you can contact me at the above address or call me at 864-902-0687.

Sincerely,



Alvin F. Simpson Jr.

Cc: John M. S. Hoefer, Esquire

RECEIVED

JAN 11 2010

Willoughby & Hoefer, P.A.